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## REMARKS

### Status Summary

Claims 1-21 were originally filed with this patent application. Claims 1-21 presently stand rejected under 35 U.S.C. § 102(b). Claims 1, 2, 5, 9, 10, 13 and 17 have been amended herein to better clarify and more particularly claim the present subject matter. New claim 22 has been added. No new matter has been added. Therefore, claims 1-22 will be pending upon entry of this amendment.

### Claim Rejections - 35 U.S.C. § 102

Claims 1-21 presently stand rejected by the Examiner under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,726,178 to Mallaney et al. ("Mallaney"). It is the Examiner's position that Mallaney discloses a retaining flap on a different and perpendicular axis with the axis of the chute flap, a chute flap (reference 38) with a different axis of pivot than the retaining flap, and a biased chute flap. The Examiner also states that the structure disclosed by Mallaney renders method claims 18-21 inherent. These positions are respectfully traversed as described further below.

Mallaney discloses a discharge cover assembly for a mowing machine. Figures 3 and 4 most clearly show a cover assembly 38 which includes a planar member 40 and a cover 44. Planar member 40 is mounted to the planar deck 20 through a front pivot 42 which allows the cover assembly 38 to pivotally move from a

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position where it overlies and covers the discharge opening 24, to an open position wherein the mower is adapted for a side discharge operation. As shown in Mallaney and specifically described (for example beginning at column 3, line 24), the rear end of the planar member 40 is connected to the planar deck 20 by a strap 50, pivot 52 attached to the housing, and a post 54 attached to cover assembly 38 with a wing nut 56. In this manner, strap 50 is attached to deck 20 on one end of strap 50 and to the cover assembly 38 on the opposite end or portion of strap 50. Cover assembly 38 can move or pivot on pivot 42 and post 54, and strap 50 can rotate about pivot 52 and post 54 wherein the position of post 54 within slot 58 of strap 50 allows for such outward movement of cover assembly 38 and strap 50 away from the original position against deck 20.

By the above amendments, independent claim 1 has been amended to recite that the retaining flap is selectively movable as described independent of the chute flap. Claim 1 has also been amended to recite that the chute flap is attached to the housing. Mallaney teaches and discloses that the strap 50 is connected and attached with the cover assembly 38 at all times. Such connection is required for proper functioning and operation of the cover assembly 38 and strap 50 as disclosed by Mallaney. There is no teaching or suggestion in Mallaney of a retaining flap attached to the housing or deck of a mowing machine for movement independent of the chute flap. There is also no teaching or suggestion by Mallaney of a movable chute apparatus as recited in claim 1 as currently amended and wherein the retaining flap is movable between a retaining position and a non-retaining position where the

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retaining flap can in its retaining position provide support to maintain the chute flap in either its closed or open chute flap position. As such, it is respectfully submitted that the rejection under 35 U.S.C. § 102(b) of the claim 1 and its depending claims based upon Mallaney should be withdrawn.

Independent claim 9 has been amended as set forth above and, like claim 1, recites that the retaining flap is movable independent of the chute flap. The arguments set forth above with respect to claim 1 relating to this feature apply with respect to claim 9 as well. Additionally, claim 9 has been amended to include that at least a portion of the retaining flap is adapted for overlapping at least a portion of the chute flap when the chute flap is in its closed chute flap position. There is no teaching or suggestion in Mallaney of a retaining flap movable independent of the chute flap and with at least a portion of the retaining flap adapted for overlapping at least a portion of the chute flap. Movement of strap 50 of Mallaney is necessarily tied to movement of the cover assembly 38, and there is also no overlap of strap 50 over cover assembly 38 coupled with any independent movement of the two structures. In light of the above, it is respectfully submitted that the rejection of claim 9 and its depending claims under 35 U.S.C. § 102(b) based upon Mallaney should be withdrawn.

Independent claim 17 has been amended as set forth above to recite that the retaining flap has a first section pivotally attached to the housing of the mowing machine and a second section disposed at least generally perpendicularly to the first section. As Mallaney merely discloses the use of strap 50 attached to the cover

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assembly 38 by use of post 54, there is no teaching or suggestion in Mallaney of a retaining flap with a first section pivotally attached to a housing or deck of a mowing machine and a second section disposed at least generally perpendicularly to the first section. Claim 17 has also been amended to recite that the retaining flap is selectively movable between a retaining position and a non-retaining position wherein the second section of the retaining flap is adapted to overlap at least a portion of the chute flap to maintain the chute flap in its closed chute flap position. Mallaney neither teaches nor suggests a second section of a retaining flap as presently recited in claim 17 and fails to teach or suggest a retaining flap selectively movable between a retaining position and a non-retaining position where the second section of the retaining flap is adapted to overlap a portion of the chute flap. Applicant respectfully submits therefore that the rejection of claim 17 under 35 U.S.C. § 102(b) based upon Mallaney should be withdrawn.

Independent claim 18 as originally filed is directed to a method for moving a chute apparatus of a mowing machine and comprises a step of lifting a retaining flap on a mowing machine from a retaining position to a non-retaining position. There is no teaching or suggestion in Mallaney of lifting a retaining flap to move from a retaining position to a non-retaining position. Claim 18 as originally filed further recites that lifting the retaining flap from the retaining position to the non-retaining position allows a chute flap attached to the mowing machine to move from its closed position to its open position. There is also no teaching or suggestion in Mallaney of a chute flap being allowed to move from a closed position to an open position by lifting

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of a retaining flap. Applicant respectfully submits that the claim rejection under 35 U.S.C. § 102(b) based upon Mallaney of independent claim 18 and dependent claim 19 should be withdrawn.

Independent claim 20 is directed to a method for moving a chute apparatus of a mowing machine and comprises a step of lifting a retaining flap on a mowing machine from a retaining position to a non-retaining position. As discussed above with respect to claim 18, there is no teaching or suggestion in Mallaney of a step of lifting a retaining flap to move it from a retaining position to a non-retaining position. Claim 20 further recites that the lifting is accomplished by pivoting the retaining flap along a first axis to allow the chute flap to pivot along a second axis with the first axis and second axis being substantially perpendicular to one another. Applicant respectfully submits that Mallaney fails to teach or suggest pivotal movement of a retaining flap along a first axis and of a chute flap along a second axis with the first axis and the second axis being substantially perpendicular. Cover assembly 30 of Mallaney pivots about an axis 42 while the strap 50 of Mallaney moves about pivot 52 and pivot 54, both of which appear to have axes at least generally parallel, rather than perpendicular with pivot 42 of the cover assembly 38. Applicant respectfully submits that the rejection of independent claim 20 and dependent claim 21 under 35 U.S.C. § 102(b) based upon Mallaney should be withdrawn.

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CONCLUSION

In light of the above amendments and remarks, it is respectfully submitted that the present application is now in proper condition for allowance, and an early notice to such effect is earnestly solicited.

If any small matter should remain outstanding after the Patent Examiner has had an opportunity to review the above Remarks, the Patent Examiner is respectfully requested to telephone the undersigned patent attorney in order to resolve these matters and avoid the issuance of another Official Action.

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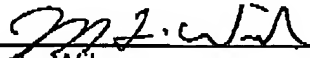
DEPOSIT ACCOUNT

The Commissioner is hereby authorized to charge any fees associated with the filing of this correspondence to Deposit Account No. 50-0426.

Respectfully submitted,

JENKINS, WILSON & TAYLOR, P.A.

Date: 10/22/04

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